

APPELLANT'S TRANSCRIPT ON APPEAL
NO. SD35695
MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

* * * * *

TEVIN L. WILLIAMS,)	
)	
Movant-Appellant,)	
)	
vs.)	In the Circuit Court of
)	Greene County, Missouri
STATE OF MISSOURI,)	
)	Case No. 1631-CC00958
Respondent.)	
)	

* * * * *

POST-CONVICTION RELIEF HEARING

Before the HONORABLE MICHAEL J. CORDONNIER,
Judge of Division I
Thirty-first Judicial Circuit
Greene County, Missouri

MAY 22, 2018

A P P E A R A N C E S

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TEVIN L. WILLIAMS vs. STATE OF MISSOURI

Case No. 1631-CC00958

MAY 22, 2018

POST-CONVICTION RELIEF HEARING

On Tuesday, the 22nd day of May, 2018,
the above cause came on before THE HONORABLE
MICHAEL J. CORDONNIER, Judge of Division I,
Thirty-first Judicial Circuit, Springfield,
Missouri.

* * * * *

(Court in session at 1:30 P.M.)

THE COURT: This is Case
No. 1631-CC00958, entitled Tevin Williams, the
Movant, versus State of Missouri, the Defendant.
The Movant, Tevin Williams, appears in person and
with his attorney, Susan Faust.

The State of Missouri appears by Assistant
Greene County Prosecuting Attorney Emily Shook.
We are here today on the Movant's motion filed
pursuant to civil -- Criminal Rule 29.15, that is
the Defendant's amended motion for
post-conviction relief.

Just to put this in context, the Defendant
had a jury trial which resulted in a verdict of
guilty of assault in the first degree and armed

1 criminal action; that verdict was rendered by a
2 jury on September 4, 2014. The matter proceeded
3 to sentencing, and on December 12, 2014, the
4 Defendant was sentenced to 25 years in the
5 Missouri Department of Corrections on the charge
6 of assault in the first degree and three years in
7 the Missouri Department of Corrections on the
8 armed criminal action, I believe, and those
9 sentences ran -- or are to run concurrently.

10 Subsequent to that, the Defendant pursued a
11 direct appeal to the Missouri Court of Appeals,
12 Southern District, and in Southern District Case
13 No. 33685, the Southern District affirmed that
14 conviction by mandate issued May 4, 2016;
15 subsequent to that, the Defendant filed his
16 motion pursuant to Rule 29.15; thereafter,
17 counsel was appointed and an amended motion was
18 filed. So that's the matter upon which we are
19 here today.

20 Ms. Faust, before we begin, why don't I give
21 you a moment to give me a very short outline of
22 what you anticipate the evidence will be today.
23 I have read the amended motion that's been filed
24 on behalf of the Movant.

25 MS. FAUST: Your Honor, I anticipate

1 the evidence will be today that trial counsel,
2 Stuart Huffman, failed to introduce really not
3 the entirety of State's Exhibit 70, which is an
4 interview by Chelsea Brashears, but failed to
5 introduce at trial impeachment evidence showing
6 that Chelsea Brashears had a motive to lie about
7 Desmond Williams' and Tevin Williams' involvement
8 in the crimes alleged.

9 Chelsea Brashears was the only corroborating
10 witness to the complaining witness John Darnell
11 Lee, who was the only eyewitness to the shooting.
12 And his story has -- had shape shifted somewhat
13 and so his ID testimony was shaky at best. The
14 majority of the evidence at trial really was John
15 Darnell Lee's testimony and Chelsea Brashears'
16 testimony.

17 And we believe that had Mr. Huffman
18 introduced this impeachment evidence, there is a
19 probable likelihood that a different outcome at
20 the trial would have been had.

21 We would further expect the evidence to be
22 that Alesha Davis, who is here to testify today,
23 should have been called; that Mr. Huffman was
24 aware of her existence and of her testimony and
25 that she had given an affidavit which would have

1 impeached Mr. John Lee's credibility as to his
 2 definitiveness that it was Tevin Williams who
 3 shot him on May 1st of 2013, as she had an
 4 encounter subsequent to that event with Mr. Lee,
 5 wherein he was demanding to know who shot him.
 6 We also expect to adduce evidence from Jessica
 7 Fitzpatrick today who was the girlfriend of John
 8 Darnell Lee during the summer following this
 9 shooting, and we expect her testimony to be that
 10 he described to her that there was a white male
 11 and a dark-skinned black male, which was
 12 different than the description that he gave at
 13 trial.

14 And we believe that she was also available
 15 for trial, and she had given an affidavit to that
 16 effect, and had Stuart Huffman investigated her
 17 testimony and subpoenaed her for trial, she was
 18 willing to appear.

19 We believe that these two witnesses would
 20 have further called into question the
 21 identification testimony of John Darnell Lee, and
 22 that had these witnesses been called to testify
 23 at trial, there is a reasonable likelihood that a
 24 different outcome would have prevailed. And that
 25 is, in essence, what we anticipate the evidence

1 to be today, Judge.

2 THE COURT: Thank you, Ms. Faust.

3 Ms. Shook, are you able to give the Court an
4 outline of what you think the evidence will be,
5 or otherwise?

6 MS. SHOOK: The State won't be
7 presenting a great deal of evidence given the
8 nature of this hearing, but I can give the Court
9 sort of an outline of my view of where things
10 stand.

11 I note that Ms. Faust did not mention all of
12 the claims that were in the Movant's amended
13 motion, and so I'm not sure if that's because of
14 an intent to abandon some of those following
15 today's hearing or just that they're not
16 presenting additional evidence and we'll rely on
17 the record for those. But I will go through each
18 of them just really briefly.

19 First with regard to the claim that
20 appellate counsel failed to raise on direct
21 appeal the trial court's err of playing portions
22 of State's Exhibit No. 70 before the jury.
23 Exhibit No. 70 being Chelsea Brashears' interview
24 with law enforcement. The State would just point
25 out to the Court that that entire claim relies on

1 old law, and doesn't take into account the fact
 2 that Missouri State statute inconsistent
 3 statements, prior and consistent statements are
 4 admissible at trial as substantive evidence and
 5 we would submit to the Court that that evidence
 6 was used properly by the State at trial.

7 With respect to Claim B, which is that trial
 8 counsel failed to request the entirety of State's
 9 Exhibit No. 70 be played, I think the Court will
 10 find that there is not sufficient foundation for
 11 that to have happened. It's one thing to impeach
 12 someone's statements with prior statements, but
 13 it wouldn't have been proper for the Court to
 14 have allowed the entirety of State's Exhibit
 15 No. 70 to be played, following the testimony that
 16 Chelsea Brashears actually gave at trial.

17 With regard to letter C, I expect that
 18 Stuart Huffman, defense counsel in this case,
 19 will testify that he is a very experienced
 20 attorney, criminal defense attorney and also
 21 trial attorney, and that every decision that he
 22 made in this case with regard to what evidence
 23 would be presented or would not be presented,
 24 which witnesses would or would not be endorsed
 25 was all strategic in nature.

1 And finally with regard to letter D, just
2 that the evidence that was presented at trial
3 supports a finding that the motion to suppress
4 for use of allegedly tainted photo lineup would
5 not have been successful because that's argument
6 first impression is inconsistent with the
7 evidence that's already been presented and it is
8 in the record in this case. So that's what I
9 expect the evidence and law will support at the
10 conclusion of the hearing.

11 THE COURT: Thank you, Ms. Shook.

12 Ms. Faust, you may -- first off, are there
13 any witnesses here in the courtroom?

14 MS. FAUST: Yes.

15 THE COURT: Is it satisfactory to leave
16 them in the courtroom or do you wish to invoke
17 the rule?

18 MS. SHOOK: I would ask for the rule on
19 witnesses, please.

20 THE COURT: Okay, let's do that.

21 MS. FAUST: Alesha and Jessica, you
22 will need to stay outside.

23 THE COURT: Is Mr. Stuart going to be
24 the first witness?

25 MS. FAUST: I was anticipating calling

1 John Darnell Lee.

2 THE COURT: You probably ought to talk
3 to Mr. Huffman. He's only got so much time.

4 MR. HUFFMAN: I'm not going to
5 interfere with Ms. Faust's strategy. I told
6 Judge Blankenship in Stone County that I will be
7 running late.

8 THE COURT: Okay.

9 (Pause in proceedings.)

10 THE COURT: Ms. Faust, you may call
11 your first witness.

12 MS. FAUST: I call Stuart Huffman.

13 THE COURT: Mr. Huffman, if you would
14 raise your right hand.

15 **STUART HUFFMAN**, having been duly sworn by
16 the Court, testified as follows:

17 THE COURT: Have a seat, please.

18 Ms. Faust, you may inquire.

19 **DIRECT EXAMINATION**

20 **BY MS. FAUST:**

21 Q. Please state your full name.

22 A. Stuart Paul Huffman.

23 Q. And, sir, did you represent Tevin Williams
24 through the entirety of the pendency of the
25 criminal case underlying this post-conviction

1 hearing today?

2 A. Yes.

3 Q. And at trial --

4 MS. FAUST: Well, Judge, may I backup
5 for a minute? One thing I did want to do prior
6 to starting my questioning was I would like to
7 offer and ask the Court to take judicial notice
8 of the trial transcript in this cause. And I'm
9 offering that as Movant's Exhibit 1.

10 THE COURT: Any objection?

11 MS. SHOOK: No, Your Honor.

12 THE COURT: Okay, the Court accepts as
13 evidence the trial transcript. I believe it is
14 actually -- there is a copy in the file so you
15 can take your hard copy back.

16 MS. FAUST: Okay.

17 THE COURT: There is an electronic copy
18 that's been posted with the file.

19 MS. FAUST: Okay. And I would also
20 offer Movant's Exhibit 2, which is the brief of
21 appellant which goes to Claim 9(a), which Movant
22 is not abandoning, but will simply rely on the
23 trial transcript, rely on the appellate brief
24 regarding the claim of 9(a). I would state that
25 I believe Ms. Shook is correct that this claim

1 does rely in large part on prior law, which has
 2 been superseded by statute. However, Movant
 3 continues to maintain that the impeachment was
 4 improper, as the witness was not confronted with
 5 all of the statements that were played to impeach
 6 her testimony at trial, and she was not asked as
 7 to the truth of her statements, and so she was
 8 not confronted with those, the truth or falsehood
 9 of her statements, which I believe is still
 10 required for proper impeachment by astringent
 11 evidence.

12 THE COURT: Okay. As to the simple
 13 offer of Movant's Exhibit 2, any objection?

14 MS. SHOOK: No, Your Honor.

15 THE COURT: Exhibit 2 is admitted.

16 You may expect, Ms. Faust, at the conclusion
 17 of this hearing, we will review together which of
 18 the claims you believe evidence has been
 19 presented on, to make sure that we address all of
 20 those in whatever order the Court chooses to
 21 enter.

22 In the meantime, you have called a witness.
 23 You may inquire.

24 Q. (By Ms. Faust) Now, Mr. Huffman, this case
 25 involved Mr. Williams, who was charged as the

1 Defendant with assault in the first degree; is
2 that correct?

3 A. Yes, ma'am.

4 Q. And armed criminal action?

5 A. Yes, ma'am.

6 Q. And he was found guilty on both counts at his
7 jury trial?

8 A. Yes, ma'am.

9 Q. Now, would you agree that the essential -- there
10 was one eyewitness to the event?

11 A. Correct.

12 Q. And that was John Darnell Lee?

13 A. Yes.

14 Q. And the only other witness that the state called
15 to corroborate Mr. Lee's testimony was Chelsea
16 Brashears?

17 A. Correct.

18 Q. And at the trial Chelsea Brashears denied that
19 she had ever -- well, let me backup.

20 The claim by your witnesses was that
21 Mr. Williams was at a party during the time of
22 the shooting?

23 A. Correct.

24 Q. And prior to trial, you had been present at the
25 State's deposition and I believe your own

1 deposition, two prior depositions of John Darnell
2 Lee's accounting of the events?

3 A. Yes.

4 Q. And were you aware that he had given various
5 different stories from the date of May 1st, 2013,
6 of the shooting, throughout those depositions, as
7 to whether or not he did indeed know or
8 recognized Tevin Williams?

9 A. I had been told by both Mr. Williams and
10 Ms. Garrison that there were individuals within
11 the community that indicated that Mr. Lee was out
12 asking as to who shot him.

13 Q. Okay.

14 A. And so there was questions about that. If I
15 remember correctly, there was even an Uncle Fred,
16 Fred Williams, I believe it may have been the
17 name, specifically was a name that I was
18 provided, that was specifically asked.

19 Q. And specifically as to John Lee's identification
20 of his assailant, there was trial testimony by
21 Detective Kevin Shipley, if you recall, that John
22 Lee was interviewed the night of the shooting.

23 The shooting took place approximately
24 2:59 A.M. on May 1st?

25 A. It was late morning. I wouldn't -- without

1 looking at the transcript, I can't remember the
2 exact time. But it was very late in the
3 morning --

4 Q. Okay.

5 A. -- or early.

6 Q. And there was quite some issue about whether John
7 Darnell Lee ever identified Tevin Williams at
8 that initial interview on May 1st.

9 A. Correct.

10 Q. And, in fact, the trial testimony from --
11 although John Darnell Lee denied it, the trial
12 testimony from Detective Shipley was that when he
13 went to interview John Darnell Lee prior to
14 surgery, that he never gave a last name of an
15 individual.

16 A. Going from memory --

17 MS. SHOOK: I would object to basically
18 this effort to paraphrase all of the trial
19 testimony. I think that the trial testimony
20 speaks for itself and is already in the record.

21 THE COURT: Okay. That and the
22 objection to leading is sustained.

23 Q. (By Ms. Faust) So do you recall whether or not
24 during the trial John Darnell Lee stated that he
25 could identify Tevin Williams at the time of the

1 shooting?

2 A. Could you rephrase that? I'm sorry.

3 Q. Okay. Is it true that the major issue in this
4 case was the identification of John Darnell Lee
5 of Tevin Williams as being the shooter?

6 A. Yes.

7 Q. And is it also true that you believe that would
8 be critical in the outcome of the trial, the
9 credibility of Mr. Lee?

10 MS. SHOOK: Objection, leading.

11 THE COURT: It's sustained. You can
12 ask those questions without leading.

13 Q. (By Ms. Faust) Well, what do you believe
14 about -- do you believe --

15 What do you believe the jury would have done
16 or likelihood that the jury would have done if
17 they didn't believe John Lee's identification of
18 Tevin Williams?

19 MS. SHOOK: Objection, calls for
20 speculation.

21 THE COURT: Sustained.

22 Q. (By Ms. Faust) Well, do you believe it was
23 important, as the trial attorney, to impeach the
24 credibility of the complaining witness?

25 MS. SHOOK: Objection, leading.

1 THE COURT: Overruled.

2 A. Absolutely.

3 Q. (By Ms. Faust) And at the trial there was
4 allowed to be played -- well, and backing up,
5 Chelsea Brashears testified at trial, as you
6 previously stated.

7 A. Correct.

8 Q. And over your objection, there were pieces of
9 that interview of Chelsea Brashears played; is
10 that right?

11 MS. SHOOK: Objection, leading.

12 THE COURT: It's overruled.

13 A. Correct.

14 Q. (By Ms. Faust) And you made no effort to
15 introduce the entirety of Chelsea Brashears'
16 videotaped interview; is that correct?

17 A. That's correct. I did not move for its
18 admission.

19 Q. And why did you not move for its admission?

20 A. There were statements contained within that were
21 both helpful and hurtful to Tevin Williams. And
22 so at the time, as we were going through that, I
23 made a decision that I didn't want to bring out
24 some of the stronger points of her interview. I
25 thought Chelsea didn't present very well at

1 trial, and she came over, and if I remember
 2 correctly, in jail uniforms because she had been
 3 picked up the week before, and so I didn't feel
 4 with her testimony that I wanted to bring out
 5 statements that she had made in her interview
 6 that actually implicated Tevin. I wanted to try
 7 and keep that out as much as we could.

8 MS. FAUST: Judge, at this time I'd
 9 like to introduce the entirety of State's trial
 10 Exhibit 70, which is the interview of Chelsea
 11 Brashears on April 3rd, 2014.

12 MS. SHOOK: No objection.

13 THE COURT: And what is it marked?

14 MS. FAUST: It's marked Movant's
 15 Exhibit 70.

16 THE COURT: Okay. Movant's Exhibit 70
 17 is admitted.

18 Q. (By Ms. Faust) Now, so you made a discretionary
 19 decision that you didn't want the entirety of her
 20 interview played?

21 A. That's correct.

22 Q. However, in that interview --

23 Well, do you recall the substance of the
 24 interview of Chelsea Brashears?

25 A. Obviously, it's been a long time. I remember it

1 was a jailhouse interview of her in connection
 2 with allegations that she was making that Tevin
 3 was at the party, had left the party, and that
 4 there were communications with the people there,
 5 and then what happened on communications upon his
 6 return --

7 Q. Okay.

8 A. -- after he had left.

9 Q. Okay. And if you recall, did you believe there
 10 were no portions of that testimony that were
 11 helpful regarding impeachment of her credibility?

12 A. Hindsight is 2020. Looking back, obviously,
 13 there are probably portions of the video that
 14 could have been played that didn't necessarily
 15 raise the concerns I had. In the moment, I made
 16 that decision. Looking back, there are probably
 17 some -- you know, after trial, you always think I
 18 probably should have played more of the video.

19 MS. FAUST: Judge, I'd like to play a
 20 portion of Movant's Exhibit 70, which is
 21 approximately the last three minutes of this
 22 interview.

23 THE COURT: You may. The court
 24 reporter is not going to take down these three
 25 minutes that's part of the exhibit.

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(An excerpt of Movant's Exhibit 70 was played for the Court, but not recorded.)

MS. FAUST: Judge, I'm going to fast-forward this by, like, two minutes. It was skipping.

(Resumed playing Movant's Exhibit 70.)

THE COURT: Okay. That complete the part you wish to play from Exhibit 70?

MS. FAUST: Yes.

THE COURT: Okay. You may continue your questioning.

Q. (By Ms. Faust) Mr. Huffman, this interview took place on April 3rd, 2014?

A. I don't have any reason to dispute you. That sounds right.

Q. Okay. And that would have been approximately 13 months after the shooting incident?

A. Yes. The shooting took place sometime in 2013, early, or late 2012.

Q. And you had listened to the entirety of this CD prior to trial?

A. Yes.

1 Q. And when Chelsea Brashears is referring to Duzzy,
2 do you know who that is?

3 A. Desmond.

4 Q. That would be Desmond Williams?

5 A. Yes, Desmond Williams.

6 Q. And Desmond Williams, did he testify at trial for
7 the defense?

8 A. He did.

9 Q. And so in this interview you hear Chelsea
10 Brashears saying essentially that two days prior
11 to this interview Desmond Williams had been
12 sentenced over some issue between the two of
13 them?

14 A. Correct.

15 Q. And she indicates she's not so much afraid of
16 Duzzy, but the people he has do his dirty work?

17 A. Correct.

18 Q. And so is there a reason that you did not offer
19 that testimony of Chelsea Brashears to show a
20 motive for her to lie regarding Desmond and Tevin
21 Williams' involvement in this event?

22 A. She didn't specifically name Tevin as a person
23 that was one of the people around. Desmond, as
24 far as like one of the people that she would be
25 afraid of, and I didn't necessarily want to taint

1 my own witness as well as Desmond Williams was my
 2 witness testifying on behalf of Tevin as well.
 3 So it was one of those fifty-fifty decisions that
 4 I decided that it was better not bringing that
 5 additional information in versus impeaching her
 6 with it.

7 Q. Okay. And as for John Lee's testimony,
 8 throughout his -- you listened --

9 You read the police reports; correct?

10 A. I read all police reports, yes.

11 Q. And you were present at the two depositions, the
 12 one in March and one July 14?

13 A. Yes, ma'am.

14 Q. July 16 of 2014?

15 A. Yes, ma'am.

16 Q. And do you recall John Lee making statements
 17 about the color of the gun?

18 A. Not without referring to the deposition.

19 Q. I will hand you what's been marked as Movant's
 20 Exhibit 1. Can you identify that document?

21 A. Yes, ma'am. This is a copy of a deposition,
 22 State of Missouri v. Tevin Williams, deposition
 23 of John D. Lee taken July 16, 2014.

24 Q. And was this actually the State's deposition of
 25 John Lee?

1 A. Correct. If I remember correctly, they were
2 taking -- filed a motion to preserve testimony of
3 Mr. Lee in case he was unavailable for trial.

4 Q. And would reviewing this deposition testimony
5 refresh your recollection?

6 A. Yes, ma'am.

7 Q. I would refer you to page 14, lines 10 through
8 12.

9 A. Yes, ma'am.

10 Q. And does John Lee refer to the gun as a chrome
11 gun?

12 A. He does.

13 Q. And at trial do you recall whether or not John
14 Lee referred to the gun specifically as a chrome
15 gun?

16 A. Specifically as a chrome, I don't believe he
17 referred to as a chrome.

18 Q. Do you recall any definition?

19 A. I don't remember chrome. But I don't remember
20 definition, again, without looking at the
21 transcript.

22 MS. FAUST: I would offer you Movant's
23 Exhibit 1 -- or Movant's Exhibit 2, I'm sorry.

24 THE COURT: You've already got a 2 and
25 you've already got a 1. You've identified two

1 other things as 1 and 2.

2 MS. FAUST: Well, I think I have
3 Movant's Exhibit 1 and 2. And Movant's
4 Exhibit --

5 THE COURT: Exhibit 1 was the
6 transcript.

7 MS. FAUST: -- 70.

8 THE COURT: Exhibit 1 was the
9 transcript.

10 MS. FAUST: Right.

11 THE COURT: Exhibit 2 and --

12 MS. FAUST: Oh, I'm sorry, Judge.

13 THE COURT: -- 3, start using 3 and 4
14 now.

15 MS. FAUST: Yeah, Judge. And it's 3.
16 So the deposition would be Movant's Exhibit 3.

17 THE WITNESS: Okay.

18 MS. FAUST: And Movant's Exhibit 4.

19 MS. SHOOK: What is Movant's Exhibit 4?

20 MS. FAUST: That is the transcript.

21 MS. SHOOK: Of?

22 MS. FAUST: Trial.

23 MS. SHOOK: I have the trial
24 transcript --

25 MS. FAUST: Judge, see, that's why I

1 thought -- can we take a moment and get the
2 exhibits straight because I thought I had offered
3 that.

4 THE COURT: You did offer it as
5 Exhibit 1.

6 MS. FAUST: As Exhibit 1. Okay. All
7 right. So that's correct.

8 Q. (By Ms. Faust) So I'm handing you Movant's
9 Exhibit 1, that's the trial transcript, and I
10 would refer you to page 345.

11 A. Yes, ma'am.

12 Q. And would you review that testimony.

13 A. Yes, ma'am.

14 Q. And is that the testimony of John Lee at the
15 trial? I believe his testimony starts on
16 page 276.

17 A. Yes, ma'am.

18 Q. And what does John Lee -- was he referring to the
19 gun in that testimony?

20 A. Yes.

21 Q. And how does he refer, if you could read that?

22 A. He says, "I mean, it's obvious what type of gun
23 it was. It was a .9 millimeter. But I don't
24 remember telling him no. I believe telling him
25 it's a chrome gun."

1 Q. Okay. So there was evidence adduced at trial
2 that John Lee identified the gun as a chrome gun?

3 A. Yes.

4 Q. And at trial do you recall that Chelsea Brashears
5 denied seeing the gun whatsoever and that's why
6 the State was able to impeach her testimony with
7 State's Exhibit 7?

8 A. I believe that's correct. Yes, ma'am.

9 MS. SHOOK: I think it was State's
10 Exhibit 70 at trial.

11 MS. FAUST: 70.

12 Q. (By Ms. Faust) And in that exhibit that has been
13 admitted to the Court, she referred to the gun
14 specifically as a black handgun. Do you recall
15 that?

16 A. I mean, I don't have any reason to disagree with
17 that. The video speaks for itself. I can't
18 remember her specifically saying that. But the
19 video is the best evidence of that.

20 MS. FAUST: And Judge, I would ask the
21 Court to take judicial notice of State's trial
22 Exhibit 70. I believe that Ms. Shook has that.
23 I do not have a copy of that. But it is the
24 actual redacted testimony that was played from
25 this interview at trial. And I would like to

1 offer that.

2 THE COURT: I think you did a moment
3 ago.

4 MS. FAUST: Well, that was -- what I
5 offered was the entire interview.

6 THE COURT: You did.

7 MS. SHOOK: I think this is the entire
8 interview, and I may have said that incorrectly
9 before. But looking at it, it is from one of the
10 detectives, Shipley.

11 MS. FAUST: Okay.

12 MS. SHOOK: So it must have been the --

13 MS. FAUST: So that's not the --

14 MS. SHOOK: -- portions of this were
15 played.

16 MS. FAUST: -- redacted?

17 MS. SHOOK: But this isn't redacted.

18 MS. FAUST: I thought the State had a
19 redacted version that was played at trial. So I
20 will withdraw that request.

21 Q. (By Ms. Faust) Now, are you familiar with Alesha
22 Davis?

23 A. Yes, I remember Alesha Davis.

24 Q. And who is that, that you recall her to be?

25 A. Alesha was a friend of Tevin Williams.

1 Q. And had you spoken with Alesha Davis prior to
2 trial?

3 A. Prior to trial I did, yes.

4 Q. And do you recall, if anything, if she had
5 anything relevant to say?

6 A. I believe -- the two things that I remember from
7 Alesha, one for sure that I remember, is that she
8 would have testified that later that evening that
9 she would have picked Tevin up and would have
10 dropped him off at his mother's house, Lisa
11 Garrison, in Springfield here. And I thought she
12 was also one of the witnesses that had heard
13 either rumors or had heard that John Lee was
14 asking in the community as to who shot him.

15 Q. I will hand you what's been marked Movant's
16 Exhibit 5. Do you recognize that document?

17 A. Yes, ma'am.

18 Q. And what is that document?

19 A. That is a notarized statement of Alesha Davis
20 dated the 17th of December, 2014.

21 Q. And had you caused that affidavit to be made? Or
22 how is it you recognize the document?

23 A. This is a document -- anytime I have a witness
24 contact me about a statement, I request that they
25 actually get a notarized statement so that way

1 it's a little bit more official because you are
 2 doing it in front of a notary. And so this would
 3 have been a statement that either Alesha gave to
 4 me directly or it would have been dropped off by
 5 Ms. Garrison.

6 Q. Okay. And this affidavit is dated December 17,
 7 2014?

8 A. Correct.

9 MS. FAUST: I'd offer Movant's
 10 Exhibit 5.

11 THE COURT: Any objection?

12 MS. SHOOK: The only objection that I
 13 would have is that I don't believe this was ever
 14 provided as any form of discovery to the State
 15 and it wasn't listed as something that Movant and
 16 his counsel intended to rely on during the course
 17 of this hearing.

18 THE COURT: Okay. I will admit the
 19 exhibit and whatever additional evidence needs to
 20 be presented with it.

21 Q. (By Ms. Faust) Now, Mr. Huffman, I will give you
 22 a copy of Movant's Exhibit 5. In that, Alesha
 23 Davis gives you an affidavit, as you stated,
 24 purporting, well, alleging and swearing that she
 25 was with Mr. Williams on the night of May 1st,

1 2013; correct?

2 A. Correct.

3 Q. And she also says that she drove Tevin Williams
4 home to his mother's house that night?

5 A. Yes. She says she gave him a ride around 4 A.M.

6 Q. And beyond that, she declares that she had an
7 altercation with John Lee at the Dollar General
8 store?

9 A. That's correct.

10 Q. And the nature of that altercation was John Lee
11 trying to identify who his assailant was on
12 May 1st, 2013?

13 A. That's correct.

14 Q. And this took place subsequent to the shooting.
15 I don't know if she -- I mean, it would.

16 A. Right. After the shooting, about a week after
17 the shooting is when Alesha indicated she was
18 approached by Mr. Lee.

19 Q. And you did not subpoena Alesha Davis for trial?

20 A. I did not.

21 Q. Did you intend on calling her at trial?

22 A. I did. That was a mistake that I made. Alesha,
23 I thought, was friendly. I don't know to this
24 day why she didn't appear at trial. We actually
25 tried contacting her during the trial, but I

1 messed up and recognized that even a friendly
2 witness needs to be under subpoena, and so she
3 was not subpoenaed.

4 Q. And as you said, at the time you would have
5 recognized that she should have been under a
6 subpoena; is that right?

7 A. We fully anticipated her to testify. I expected
8 her to be there when I was presenting my
9 testimony, but she was not. Because I had not
10 subpoenaed her, I had no remedy at that point.

11 Q. And are you familiar with the name Jessica
12 Fitzpatrick?

13 A. I have looked. I don't remember that name at
14 all. I looked through my time entries. That
15 doesn't mean that somebody didn't mention. I
16 just don't have any independent recollection of
17 that name.

18 Q. I will hand you what has been marked Movant's
19 Exhibit 6. Do you recognize that document?

20 A. Most likely I probably would have received both
21 at the same time.

22 Q. Is that document that purports to be an affidavit
23 by a Jessica Fitzpatrick?

24 A. Correct. Ms. Fitzpatrick was subscribed and
25 sworn before a notary, Kaitlyn Wallace, the.

1 same date in time ad nauseam, probably appears to
 2 be the same type of notebook paper, on
 3 December 17 of 2014.

4 Q. Now, do you know who Kaitlyn Wallace is? Is that
 5 your notary?

6 A. I do not know who Kaitlyn Wallace is, no.

7 Q. Okay. And so you gave to appellate counsel the
 8 entirety of your physical file; is that right?

9 A. Correct. Our policy is to scan the file and then
 10 the entire file, notes, everything, goes to the
 11 appellate counsel.

12 Q. And so as this was along with Alesha Davis, would
 13 you be surprised that this was part of your file?

14 A. No. As soon as I saw the notary and the date, I
 15 recognized -- I didn't remember the name, but the
 16 document is probably a document that came out of
 17 my file and went with appellate counsel.

18 Q. Okay. And this affidavit of Jessica Fitzpatrick
 19 alleges that -- what?

20 A. This is an affidavit that indicated that she was
 21 his -- John Lee's girlfriend in the summer of
 22 2013; that Mr. Lee had come home from the
 23 hospital and stated that he didn't actually know
 24 who attacked him; that it was a white boy that he
 25 had met up with; and there was a dark-skinned guy

1 with a hat on that was there. She claims in the
 2 affidavit that John only gave the name he did
 3 because a female bringing the name to him never
 4 knowing if it was, and I assume that was if it
 5 was actually Tevin Williams that shot Mr. Lee.

6 Q. Now, you've stated earlier that you weren't --
 7 you didn't specifically recognize the name
 8 Jessica Fitzpatrick.

9 Does this document refresh your recollection
 10 as to her?

11 A. As far as her specifically, the name still is not
 12 ringing a bell. But the document is familiar
 13 because, again, I guarantee I received these two
 14 documents on the same date and time.

15 Q. Okay. And I'm not sure, only if you know, well,
 16 did you subpoena Jessica Fitzpatrick to testify
 17 at this trial?

18 A. No, I did not.

19 Do you have the original? Because we have
 20 had it scanned.

21 Q. This is what I have.

22 A. Okay. Basically why I was asking for
 23 clarification is because policy -- and I don't
 24 remember if this was before or after trial, we
 25 actually marked "scanned" on every document that

1 comes in. But this was in 2014, so we may not
 2 have been scanning everything in at that point.
 3 But like I said, Ms. Garrison, if she had brought
 4 this in, she would bring it in at the same time.
 5 She would have dropped it off at our office. It
 6 would have gone into the file.

7 Going back to your original question, did I
 8 subpoena her? No, I did not.

9 Q. And today, do you have any known reason why you
 10 would not have pursued an interview or testimony
 11 and subpoenaed Jessica Fitzpatrick for trial?

12 A. No. I was probably told in advance of her
 13 statement, had the statement written out, and I
 14 would not have any sort of trial strategy or
 15 reason as to why I wouldn't have called her to
 16 the stand or testify or have her subpoenaed.

17 Q. And do you agree this testimony would have gone
 18 to impeaching the credibility of John D. Lee's
 19 identification of Tevin Williams?

20 A. Yes.

21 MS. FAUST: Judge, I'd move to offer
 22 Movant's Exhibit 6.

23 MS. SHOOK: No objection.

24 THE COURT: Exhibit 6 is admitted.

25 Q. (By Ms. Faust) Do you recognize the name Melvin

1 Jackson?

2 A. I do recognize Melvin Jackson.

3 Q. And is he relevant -- did he have any relevant
4 testimony to the defense in this case?

5 A. Yes, similar to the other people that we kind of
6 talked about, Melvin was an individual who I had
7 spoken to over the phone, confirming again that
8 John Lee had told him specifically that he didn't
9 know or that was trying to figure out who shot
10 him.

11 Q. And did you subpoena --

12 Well, did you intend on calling Melvin
13 Jackson for trial?

14 A. I did.

15 Q. And did you call him?

16 A. I did not.

17 Q. And why not?

18 A. Same mistake I made with Alesha Davis. Melvin
19 had actually communicated with Lisa. She and I
20 were actually trying to get ahold of Melvin
21 during the trial, but because I had not
22 subpoenaed Mr. Jackson I did not have any remedy.
23 And on the day that we were supposed to present
24 our testimony we couldn't get Mr. Jackson, ahold
25 of him, and so because I had failed to subpoena

1 him, I had to go forward with what I had.

2 Q. Okay. So you anticipated that he would come
3 cooperatively and so you didn't subpoena him?

4 A. I spoken to him on the phone. He had spoken with
5 the family. We thought he would be there.

6 Q. And when you say you had -- Lisa had been in
7 contact with him, are you referring to Lisa
8 Garrison?

9 A. Ms. Garrison, yes, who is Tevin Williams' mother.

10 Q. Okay. And the people --

11 Is it a fair statement to say that in
12 general, well, there were drugs involved in this
13 case?

14 A. Yes, absolutely.

15 Q. And that there was an issue about whether there
16 was some sort of drug dealing gone bad?

17 A. The entire issue is whether or not this was a
18 retaliation over stolen marijuana or drugs.

19 Q. Okay. And so you have been practicing many years
20 in this area at the time of this trial; is that
21 right?

22 A. At the time of the trial it would have been
23 14 years.

24 Q. Okay. And knowing that the case involved drug
25 dealing and people who knew John Lee, who was

1 involved with drugs or was on drugs at the time
 2 of the shooting, you nevertheless trusted that
 3 they would voluntarily appear, meaning Alesha
 4 Davis, Jessica Fitzpatrick, and Melvin Jackson?

5 A. I didn't have any information that necessarily
 6 that Melvin or Alesha were involved in drugs.
 7 For all I know they overslept, had the date
 8 wrong. I don't know why they weren't there. But
 9 I didn't subpoena them. So I don't have any
 10 information that Alesha was on drugs or that
 11 Melvin was on drugs.

12 Melvin, I was told, was a little unreliable
 13 but not because of drugs; I think just in a
 14 general nature. But, again, I don't think it was
 15 drugs that were connected to their failure to
 16 appear.

17 Q. Okay. And you did call Desmond Williams?

18 A. I did, yes. Desmond was present and testified.

19 Q. And he was actually implicated by Chelsea
 20 Brashears as being involved with giving Tevin
 21 Williams the gun to go shoot John Darnell Lee?

22 A. Yes. Chelsea specifically implicated Desmond as
 23 an accomplice.

24 Q. And did you have Desmond Williams under subpoena?

25 A. I don't believe I had Desmond under subpoena. He

1 appeared voluntarily.

2 Q. Do you know if you subpoenaed anyone to testify
3 on Mr. Williams' behalf?

4 A. Without looking back to my files to see if there
5 was copies of subpoenas independently, I don't
6 remember subpoenaing anybody. I think I was
7 under the impression that they would appear
8 voluntarily.

9 MS. FAUST: Thank you. I have no
10 further questions.

11 THE COURT: Cross-examination,
12 Ms. Shook.

13 MS. SHOOK: Yes, Your Honor.

14 **CROSS-EXAMINATION**

15 **BY MS. SHOOK:**

16 Q. Mr. Huffman, when did you begin practicing law?

17 A. 2000.

18 Q. And you've practiced continuously since that
19 time?

20 A. Yes, ma'am.

21 Q. Have you always practiced criminal law?

22 A. 80 percent to 90 percent of what I've done has
23 always been criminal law.

24 Q. Aside from the trial of Mr. Williams, have you
25 tried other A and B felony cases?

1 A. Yes, ma'am.

2 Q. Jury trials?

3 A. Yes, ma'am.

4 Q. Approximately how many other A and B felony jury
5 trials would you say you've done?

6 A. If that includes unclassified felonies, 15-plus.

7 Q. Have you also tried A and B felony bench trials?

8 A. Yes.

9 Q. Approximately how many?

10 A. Probably 20-plus.

11 Q. During the time that you've been practicing
12 criminal law, have you always subpoenaed every
13 witness you anticipated would testify at trial?

14 A. No. After this case I changed my policy to
15 subpoena everybody. But up to this point I
16 didn't.

17 Q. With regard specifically to Alesha Davis and
18 Melvin Jackson, did you do something to ensure or
19 to, I guess, assure yourself that they would
20 appear for Mr. Williams' trial?

21 A. My understanding of Alesha, that she was very
22 supportive of Tevin. She had been active in the
23 case. She communicated with Lisa. Lisa
24 communicated with me on a regular basis. So I
25 took that to mean that she would show

1 voluntarily. Melvin was probably a little bit
 2 less reliable. That was somebody that came along
 3 a little bit later in the process, as far as his
 4 information, and so, again, because of his
 5 connection to Tevin, that he wasn't like a
 6 stranger or anything, he was a supporter, I
 7 thought he would appear.

8 Q. And you communicated to them or had someone
 9 communicate on your behalf the date of the trial?

10 A. Yes.

11 Q. And you believe that they understood when they
 12 were supposed to be present to testify?

13 A. I believe so, yes.

14 Q. Did Lisa Garrison assist you in securing written
 15 statements from Alesha Davis and Jessica
 16 Fitzpatrick?

17 A. I know Alesha was -- or I'm sorry, I know Lisa
 18 was involved. As far as whether she personally
 19 went with him, I don't have any independent
 20 knowledge. I thought she was the one that
 21 brought him to my office. But I can't say she
 22 went with him to do that. I don't have any
 23 independent knowledge of that.

24 Q. What about with regard to Melvin Jackson, was
 25 Lisa Garrison involved in securing information

1 about Melvin Jackson's anticipated testimony?

2 A. Yes, Lisa was very involved in her son's case.

3 Q. With regard to Alesha Davis, Jessica Fitzpatrick,
4 and Melvin Jackson, did you have concerns at any
5 time that Lisa Garrison was influencing the
6 content of their testimony?

7 A. As far as influencing, it's hard to say. Lisa is
8 passionate about her son's defense, and I think
9 that can be interpreted as pushy; it can be
10 interpreted in many different ways. Nobody ever
11 told me that she was forcing them to lie or to be
12 untruthful. And so while I had some concerns
13 about Alesha at one point, there was never
14 anything that I had solid that indicated that she
15 was willing to lie on behalf of Tevin.

16 Q. Do you have any recollection, sitting here now,
17 as far as what connection there was between
18 Alesha Davis and Jessica Fitzpatrick?

19 A. I don't.

20 Q. But you testified earlier that based on the
21 appearance of Movant's Exhibit 5 and Movant's
22 Exhibit 6, that it appeared that the two
23 affidavits were written on the same paper and
24 were sworn on the same date before the same
25 notary; correct?

1 A. They were, yes.

2 Q. Okay. The handwriting appears to be different?

3 A. The handwriting is different, yes.

4 Q. Okay. But it certainly --

5 A. Signature.

6 Q. -- appears that these two women made these
7 written statements together, or close in time?

8 A. At least close in time, that's all I can say.

9 Q. And I think earlier you agreed with Ms. Faust's
10 statement that Jessica Fitzpatrick was an
11 ex-girlfriend of John Lee?

12 A. She was. That was my understanding.

13 Q. And at the time of this trial they were not
14 dating; is that right?

15 A. To my knowledge, no.

16 Q. Would you have had any concerns about calling a
17 witness's ex-girlfriend to testify about his
18 credibility?

19 A. It depends on the circumstances. This is a case
20 involving a client that wore a shirt that said
21 snitches something with ditches. Right? And so
22 you take your witnesses as they come. And in
23 this particular case I probably would have called
24 her because specifically she could testify to one
25 specific issue in the case, which would have been

1 beneficial to Mr. Williams.

2 Q. You'll agree with me that you didn't file any
3 notice of an alibi?

4 A. Yeah, I don't think I filed an alibi.

5 Q. Not something that you would be required to do in
6 response to the State's discovery request?

7 A. That's correct.

8 Q. Okay. Would you agree with me that the reason
9 that you didn't file a notice of alibi was
10 because -- although you intended to present some
11 evidence about Mr. Williams being at a party on
12 the night of the incident -- you actually weren't
13 able to account for all of his time on that
14 evening to preclude him from being able to commit
15 the offense?

16 A. I mean, I think that's correct. There was some
17 period of time at the party that I couldn't
18 account for. We had pictures of him at the party
19 and witnesses. But I think the not filing of the
20 alibi was more of an oversight than me not being
21 in a position where I could account for every
22 single moment of it.

23 Q. You filed a response to the State's request for
24 disclosure where you endorsed Alesha Davis as a
25 witness?

1 A. I did.

2 Q. Okay. And on that you included in the fifth
3 paragraph, and this is all in the Court's record,
4 that you did not intend to rely on a defense
5 alibi?

6 A. I did.

7 Q. Okay. And then in your --

8 In another response to the State's request
9 for disclosures you endorse witnesses Desmond
10 Williams and Melvin Jackson?

11 A. I did.

12 Q. Okay. And also on the same document endorsing
13 them in April of 2014, you state that the
14 Defendant did not intend to rely on a defensive
15 alibi?

16 A. That's correct.

17 Q. And then, finally, you filed a supplemental
18 response to the State's request for disclosures
19 endorsing Ivory Williams?

20 A. Yes.

21 Q. And on that, again, paragraph 5 indicates --
22 paragraph 4, I'm sorry, indicates that you did
23 not intend to rely on a defensive alibi at that
24 time?

25 A. That's correct.

1 Q. So each of those times you specifically indicated
2 to the State that you did not intend to present a
3 defensive alibi?

4 A. As in the filing, yes.

5 Q. Would you agree with me that even if all of these
6 witnesses had testified at trial -- Alesha Davis,
7 Jessica Fitzpatrick, and Melvin Jackson -- in
8 conjunction with all those witness who actually
9 did testify at trial, you still wouldn't have
10 been able to account for all of Mr. Williams'
11 time on the night of the incident, thus proving
12 that he couldn't have committed the offense?

13 A. Alesha would have testified, timewise, the most
14 important documents because of the offense took
15 place at 2:59, so while I couldn't account for
16 the entire night, I could account for the time of
17 the shooting, which was probably the most
18 critical time.

19 Q. Because you would have called Alesha to testify
20 that she dropped the Defendant off at his
21 mother's house?

22 A. Right. She arrived at the party at 3 which is
23 shortly after, I think, the 2:59, and Tevin was
24 supposedly there, and then dropped him off, like,
25 an hour later.

1 Q. Did Lisa Garrison testify?

2 A. At trial?

3 Q. Yes.

4 A. No.

5 Q. But she could have testified, according to Alesha
6 Davis, that Alesha had dropped the Defendant off
7 at Lisa Garrison's house?

8 A. Right, she could have testified to that.

9 Well, to be fair, as I think about that, she
10 dropped Tevin off at Lisa's, but I don't remember
11 if Lisa was up. It was 4 in the morning. So I
12 don't know if Lisa could have testified that she
13 was present and saw Tevin come in at 4. I don't
14 recall that.

15 Q. So then your recollection is that Alesha Davis
16 would have testified that she picked the
17 Defendant up at the party close in time to when
18 the shooting occurred and then took him to his
19 house approximately an hour later?

20 A. No. Alesha arrived at the party around 3 A.M.,
21 and the party was in full effect. And the
22 shooting took place at, I believe, 2:59. And so
23 Alesha would have testified for the hour that she
24 was there, from basically 3 to 4 Tevin was there,
25 so that would have accounted for the most

1 critical aspect of the timeline.

2 Q. You testified that you felt like Chelsea Brashear
3 didn't present very well to the jury?

4 A. Correct.

5 Q. And you would agree with me that when she
6 testified she was actually in custody?

7 A. She was.

8 Q. And that was pursuant to the State's request for
9 a material witness warrant?

10 A. Correct.

11 Q. So there was already some information available
12 to the jury to suggest that she was not
13 cooperative with the prosecution of this case?

14 A. It could be inferred whether -- we're not allowed
15 to tell them that.

16 Q. And would you agree with me that that would have
17 been inconsistent then with trying to impeach
18 her, that she had a motive to lie with the
19 State's case because she was trying to get
20 someone else in trouble?

21 A. At that moment she would have motive to cooperate
22 just to be released from jail.

23 Q. Okay. But it would be inconsistent for her to
24 refuse to appear in court and require a material
25 witness warrant if the whole reason why she

1 wanted to testify was because she had an ulterior
2 motive?

3 A. I don't have a good answer to that. I mean, the
4 reality is that people don't want to cooperate
5 for lots of different reasons: They don't want to
6 be involved; they don't like the State. They
7 don't like -- there are so many different reasons
8 when you actually speak with people who aren't
9 familiar with the justice system as to why they
10 don't want to cooperate.

11 Q. Did you have Lisa Garrison or anyone from your
12 office go look for any of these witnesses during
13 the course of the trial?

14 A. During the trial?

15 Q. Yes.

16 A. I didn't -- I don't think I --

17 Lisa was here during the entire trial. I
18 know that we attempted to call. But as far as
19 sending Ms. Garrison out to go find them, no, I
20 didn't request that she go look for them. I
21 thought it was important for her to be here with
22 her son. I did not ask my secretary or paralegal
23 to go look.

24 Q. When you tried to call Alesha Davis and Melvin
25 Jackson, were you able to reach either of them?

1 A. No.

2 MS. SHOOK: Nothing further.

3 THE COURT: Additional direct exam?

4 **REDIRECT EXAMINATION**

5 **BY MS. FAUST:**

6 Q. Mr. Huffman, why didn't you do a notice of --
7 well, let me backup.

8 You just testified that Alesha Davis would
9 have accounted for the critical time period,
10 which was the shooting. So Mr. Williams couldn't
11 have been at the shooting and at Desmond
12 Williams' jam session at the same time or within
13 60 seconds, so would that not be an alibi, in
14 your mind?

15 A. It would. It was an oversight. It was a
16 mistake.

17 MS. FAUST: I have no further
18 questions.

19 THE COURT: Any further
20 cross-examination?

21 MS. SHOOK: No, Your Honor.

22 THE COURT: Mr. Huffman, thank you.

23 THE WITNESS: Thank you, Judge.

24 THE COURT: You may be excused.

25 (Witness excused.)

1 THE COURT: Ms. Faust, you may call
2 your next witness.

3 MS. FAUST: I call Jessica Fitzpatrick.

4 THE COURT: Are you Ms. Fitzpatrick?

5 THE WITNESS: Yes, sir.

6 THE COURT: Come right up here. Raise
7 your right hand.

8 **JESSICA FITZPATRICK**, having been duly sworn
9 by the Court, testified as follows:

10 THE COURT: Have a seat, please.

11 Ms. Faust, you may inquire.

12 **DIRECT EXAMINATION**

13 **BY MS. FAUST:**

14 Q. Please state your full name?

15 A. Jessica Fitzpatrick.

16 Q. Ms. Fitzpatrick, do you live in Springfield?

17 A. Yes, I do.

18 Q. And in 2014 did you live in Springfield,
19 Missouri?

20 A. Yes, I did.

21 Q. And did you know -- do you know a John Darnell
22 Lee?

23 A. Yes.

24 Q. And did you know him in the spring of 2013?

25 A. Yes. He was my boyfriend. He was my boyfriend

1 at that time.

2 Q. Okay. And did you two live together?

3 A. Yes.

4 Q. Did you live together at the time --

5 He was shot; correct?

6 A. He moved in with me after he got shot. After his

7 release from the hospital.

8 Q. After he was released from the hospital?

9 A. Uh-huh.

10 Q. And do you know approximately how long after he

11 was released from the hospital?

12 A. The day he was released he came to my house

13 because I took care of him.

14 Q. Okay. And he is no longer your boyfriend?

15 A. Huh-uh.

16 Q. And when did you break up, approximately?

17 A. About a year later, nine months or so.

18 Q. Okay. And while you were living with him, did he

19 make statements to you about the event of the

20 shooting?

21 A. Yes.

22 Q. And did you create an affidavit regarding the

23 statements that he made to you?

24 A. Yes, I did, and I got it notarized.

25 Q. And did you -- where did you have that statement

1 notarized?

2 A. I believe Kinkos.

3 Q. Okay.

4 A. Kinkos does notary, I think. It was a copy

5 place. FedEx, Kinkos.

6 Q. Okay. And were you with Alesha Davis when you

7 went to the notary?

8 A. I believe so.

9 Q. Okay. And how do you know Alesha?

10 A. Just mutual friends. I have lived here for a

11 long time.

12 Q. Okay. And how is it that you got together and

13 both went to the same notary?

14 A. Just the -- I didn't know where to go to a

15 notary, so she did.

16 Q. Okay. Let me hand you what's been marked as

17 Movant's Exhibit 6. Do you recognize that

18 document?

19 A. Yes, ma'am.

20 Q. And is that the affidavit --

21 A. Yes.

22 Q. -- that you signed?

23 A. Yes, ma'am.

24 Q. And that was on December 17 of 2014?

25 A. Yes, ma'am.

1 Q. Now, were you still boyfriend/girlfriend with
2 John Lee then? Or were you broken up?

3 A. December of 2014, no, I believe we were broke up.

4 Q. Okay. And what did John Lee tell you about the
5 incident?

6 A. That the night he was shot, he was at an
7 apartment. He was getting high, and a white boy
8 called him and told him to come outside. And I
9 don't know the guy's name. But that the white
10 boy and then a dark-skinned black man with a hat
11 on, were who he saw, and then after that he got
12 shot and he took off running.

13 Q. Okay. And is that reflected in your affidavit,
14 that John Lee identified his shooter as either
15 the white boy or a dark-skinned black man?

16 A. Yes, ma'am.

17 Q. And did he ever name a name of who shot him to
18 you?

19 A. No. He told me he did not know. That a female
20 had told him that she heard from somebody who
21 heard from somebody that it could have been
22 whoever. He never really said he knew for sure
23 who shot him.

24 Q. Okay.

25 A. Never once.

1 Q. And if you recall, was this female someone that
2 he knew through Facebook or had seen Facebook
3 postings about?

4 A. I can't really recall that. If he knew her from
5 the streets or the internet.

6 Q. Okay. And do you have any other information, as
7 far as statements that John Lee made, regarding
8 whether or not he was able to identify the -- his
9 shooter?

10 A. No. I just know that he -- I know he said he did
11 not know. He was high when it happened, on
12 cocaine. He was not sure who shot him. And that
13 he only said what he felt he was supposed to say
14 because he didn't want to get in trouble for the
15 drugs that he had on the night of him getting
16 shot.

17 Q. Okay. And when you made this affidavit, what did
18 you do with it? Did you take it to the defense
19 lawyer's office?

20 A. I believe I gave it to family to give to the
21 lawyer.

22 Q. Okay. And do you have an axe to grind against
23 John Lee today?

24 A. No.

25 Q. And is it your testimony that this affidavit that

1 you filled out is the truth?

2 A. Yes, ma'am.

3 Q. Were you ever contacted by defense attorney
4 Stuart Huffman?

5 A. No, ma'am.

6 Q. And are you under subpoena today?

7 A. Yes, ma'am.

8 MS. FAUST: I have no further
9 questions.

10 THE COURT: Cross-examination.

11 **CROSS-EXAMINATION**

12 **BY MS. SHOOK:**

13 Q. Are you currently on probation?

14 A. Yes, ma'am.

15 Q. For what?

16 A. Stealing.

17 Q. One case of stealing or more than one?

18 A. No, I have more than one.

19 Q. How many?

20 A. Five, I believe.

21 Q. Are those in Greene County or other counties or a
22 combination?

23 A. Combination.

24 Q. Okay. In any of those cases do you currently
25 have a conviction?

1 A. I have an SIS, so suspended. I am in drug court.
2 Q. When you said that you gave a copy of your
3 affidavit to someone in Mr. Williams' family, do
4 you recall who you gave it to?
5 A. No. Maybe --
6 Q. Who in --
7 A. -- his mom.
8 Q. -- his family --
9 Probably his mom, is that what you said?
10 A. Yeah.
11 Q. And that would be Lisa Garrison?
12 A. Yes, ma'am.
13 Q. Was Ms. Garrison there with you when you wrote
14 out the affidavit?
15 A. No, ma'am.
16 Q. Was anyone there other than you and Alesha Davis?
17 A. When I got it notarized?
18 Q. Yes.
19 A. Not that I can recall. My kid.
20 Q. And I assume the notary?
21 A. Yeah. My son might have been with me. But it
22 was kind of a while ago.
23 Q. How do you know Alesha Davis?
24 A. Just through mutual friends. I know a few people
25 in Springfield. I've been here for a while.

1 Q. Were you friendly with Alesha Davis before John
2 Lee was shot?

3 A. Yeah, I would say so, like an acquaintance.

4 Q. Did you know Tevin Williams before John Lee was
5 shot?

6 A. Kind of but not really. Like, I know of him. I
7 know him, but I never hung out with him.

8 Q. You said that you believe that John Lee was told
9 by a female who it was that shot him?

10 A. He said he had heard from a female that she had
11 heard.

12 Q. Did he tell you that person's name?

13 A. He didn't say the name, no. He just said he had
14 heard that somebody knew who shot him but he
15 never actually told me who.

16 Q. When did he tell you that?

17 A. I don't know. When we were living together. I
18 couldn't tell you when.

19 Q. You were living together from about the time of
20 the shooting until the end of December of 2014?

21 A. Yeah.

22 Q. Did he tell you when it was that that female
23 identified the shooter to him?

24 A. No. Usually when it came to other females, we
25 didn't get into a lot of detail.

1 Q. So do you have a belief that that other female
2 was someone that he had some sort of relationship
3 with?

4 A. I'm not sure.

5 Q. When you say that you and he didn't talk about
6 other females, did you have issues in your
7 relationship that related to other females?

8 A. No. We just didn't talk about that. We weren't
9 together that long so it wasn't a thing.

10 Q. It wasn't an exclusive relationship?

11 A. I guess you could say that.

12 Q. So then you are saying that you believe that he
13 was seeing other women socially or romantically
14 or intimately during the time that you were his
15 girlfriend --

16 MS. FAUST: I am going to object. It's
17 mischaracterizing the evidence.

18 COURT REPORTER: One at a time.

19 THE COURT: Okay. It's overruled.

20 Q. (By Ms. Shook) Do you need me to repeat the
21 question?

22 A. Yeah.

23 Q. Okay. So you are saying, during the time that
24 you were Mr. Lee's girlfriend, that he was seeing
25 other women socially, romantically, intimately,

1 one of those things, and that you and he didn't
2 talk about it?

3 A. I couldn't tell you if he was or wasn't because
4 it wasn't a big deal if he was or wasn't. I
5 don't really feel like that was relevant.

6 Q. So why not talk about it? When you said he
7 didn't tell you who it was, but it was another
8 female, I'm sort of understanding from that, or
9 inferring from that, I guess, that the reason you
10 didn't talk about it was because that was an
11 off-limit topic in your relationship; is that
12 right?

13 A. Or I just didn't care to ask.

14 Q. So if it had been a male, you would have expected
15 to hear the name; but you didn't care about a
16 female name so you didn't expect to hear it?

17 A. I probably didn't care if it was a male. Our
18 relationship wasn't --

19 Q. Wasn't what?

20 A. It just wasn't -- I mean, it wasn't very
21 in-depth.

22 Q. It wasn't serious?

23 A. Not really.

24 Q. So when Mr. Lee told you this about having
25 someone else give him a name of the person who

1 shot him, he just identified that person
2 generically as a female?

3 A. Yes. On who told him?

4 Q. Yes.

5 A. Yeah.

6 Q. Was that the word he used?

7 A. Well, no, he said a bitch, a bitch told him.

8 Q. But he didn't tell you if it was someone he knew
9 from before?

10 A. No. I mean, there would have been no reason for
11 him to just say that to me.

12 Q. But he didn't tell you if it was someone he knew
13 from before?

14 A. No, ma'am.

15 Q. He didn't tell you where that conversation took
16 place?

17 A. No, ma'am.

18 Q. He didn't tell you how it was that she knew?

19 A. No, ma'am.

20 Q. And you don't recall when it was that she told
21 him?

22 A. No, ma'am.

23 Q. And you don't recall when it is that he told you
24 that she told him?

25 A. No, ma'am. Everything was in 2013 is when we

1 lived together so that's the best I can give you.

2 Q. How many times was he shot as a result of this
3 incident, if you know?

4 A. I believe six. He told me eight. I only saw
5 maybe four wounds so I couldn't actually tell
6 you.

7 Q. And during this time that you were living with
8 him, you were taking care of him?

9 A. Uh-huh. And we only took care of four wounds and
10 the colostomy bag that he had on his stomach.

11 Q. But during this time when you were taking care of
12 him and taking care of his wounds, taking care of
13 his colostomy bag, he was also associating with
14 other women?

15 A. I would assume so. I don't know.

16 MS. SHOOK: I don't have anything
17 further.

18 THE COURT: Additional direct exam?

19 MS. FAUST: Briefly.

20 **REDIRECT EXAMINATION**

21 **BY MS. FAUST:**

22 Q. Has anyone threatened you to give your testimony
23 today?

24 A. No, ma'am. As a matter of fact, I volunteered.

25 Q. Okay. Did anybody threaten you or make any

1 promises to you to create the affidavit you
2 created back on December 17, 2014?

3 A. No, ma'am.

4 MS. FAUST: I have no further
5 questions.

6 MS. SHOOK: Nothing further from the
7 State.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you.

10 (Witness left the stand.)

11 MS. FAUST: I call John Lee.

12 THE COURT: Mr. Lee, right over here.

13 Raise your right hand.

14 **JOHN DARNELL LEE**, having been duly sworn by
15 the Court, testified as follows:

16 THE COURT: Ms. Faust, you may inquire.

17 **DIRECT EXAMINATION**

18 **BY MS. FAUST:**

19 Q. Please state your full name.

20 A. John Darnell Lee.

21 Q. And are you currently incarcerated in the Taney
22 County Jail?

23 A. Yes, ma'am.

24 Q. And, sir, back on May 1st of 2013, you were the
25 victim of a shooting; is that right?

1 A. Yes, ma'am.

2 Q. And did that shooting happen at approximately
3 2:59 A.M.?

4 A. Yes, ma'am.

5 Q. And you were taken to the hospital?

6 A. Yes, ma'am.

7 Q. And did law enforcement or any police officers
8 question you prior to --

9 Well, you had surgery; is that right?

10 A. Yep.

11 Q. And prior to going into surgery did any law
12 enforcement official question you?

13 A. Yeah.

14 Q. And do you recall telling law enforcement that
15 you thought someone named Trey or Traevon had
16 shot you?

17 A. Yes, ma'am.

18 Q. And do you also recall telling law enforcement
19 that you did not know Tevin Williams at the time?

20 A. Yep.

21 Q. And, in fact, you then went into surgery and the
22 very following morning were interviewed again by
23 law enforcement; is that right?

24 A. Yep.

25 Q. You were still in the hospital?

1 A. Yes.

2 Q. And at that time you were shown a lineup; is that
3 correct?

4 A. Yes, ma'am.

5 MS. FAUST: Judge, may we approach?

6 THE COURT: You may.

7 (Counsel approached the bench for
8 a discussion off the record.)

9 Q. (By Ms. Faust) I am handing you what's been
10 marked as Movant's Exhibit 7. Are you familiar
11 with this document?

12 A. Yeah, I've seen 'em before.

13 Q. And that's the lineup that was shown to you the
14 morning after your surgery?

15 A. (Nodded head up and down.)

16 Q. And there is a circle here with your initials; is
17 that right?

18 A. Yes.

19 Q. And do you recall being --

20 Well, there was a deposition back in July of
21 2014?

22 A. Yes, ma'am.

23 Q. And do you recall indicating in that deposition
24 that the names were -- that Tevin Williams' name
25 was up under the photograph?

1 MS. SHOOK: Objection, improper
2 impeachment.

3 THE COURT: I am going to overrule the
4 objection. You don't need to lead these
5 witnesses. You can ask the questions without
6 leading them.

7 MS. FAUST: Okay.

8 THE COURT: That objection is
9 overruled.

10 Q. (By Ms. Faust) Did you at a deposition tell
11 under oath -- say that you were shown the name of
12 Tevin Williams in the lineup?

13 MS. SHOOK: Objection. It misstates
14 the content of the deposition.

15 THE COURT: And it is leading. It's
16 sustained. Let's see if we can ask one of these
17 witness's a non-leading question.

18 Q. (By Ms. Faust) Do you recall whether or not you
19 were shown a photo lineup with Tevin Williams'
20 name on it?

21 A. Yes, ma'am.

22 Q. And were you?

23 A. You say a photo lineup?

24 Q. Yes.

25 A. Yeah, I believe they shown me a lineup. I mean,

1 a picture like what -- pictures, like, circled.
 2 I mean, it was -- I mean, the same picture you
 3 just showed me is the picture they showed me.

4 Q. Let me hand you what's been marked Movant's
 5 Exhibit A. Do you recognize this lineup?

6 A. Yeah, it's the same picture. They had a circle
 7 around his picture.

8 Q. And was his name on the lineup?

9 A. I don't remember that. That was five years ago.
 10 I don't remember that, ma'am.

11 Q. So you don't remember whether or not his name was
 12 on the picture?

13 A. No, I don't remember that. I don't remember
 14 seeing that.

15 Q. Or under the picture?

16 A. No, ma'am.

17 Q. But you believe that the name was already
 18 circled?

19 A. The picture -- I mean, I remember that picture.
 20 They had his pictured circled. Somebody marked
 21 his picture.

22 Q. Well, do you believe if you had the opportunity
 23 to read the transcript of your deposition, that
 24 may refresh your recollection?

25 MS. SHOOK: Judge, I will object. I

1 don't think that he testified about that at his
2 deposition.

3 THE COURT: Well, I don't know the
4 answer to that. He doesn't have a memory. So if
5 you've got a document that can refresh his
6 recollection, you can consider that.

7 MS. SHOOK: Can I see what you're going
8 to show him first?

9 (Pause in proceedings.)

10 MS. SHOOK: Yeah, that's not what that
11 says.

12 MS. FAUST: Well, I can ask.

13 MS. SHOOK: That's what you want it to
14 say, but that's not what that says.

15 Q. (By Ms. Faust) I'm handing you what's been
16 marked Movant's Exhibit 3, and can you read the
17 front of that? Does that say "Deposition of John
18 Lee"?

19 A. Yes, ma'am.

20 Q. I will refer you to page 29 of the deposition,
21 and if you can just review page 12 -- or line 12
22 through 20.

23 A. (Witness complying.)

24 Q. And so after reviewing that, do you recall
25 whether or not you were shown a lineup with Tevin

1 Williams' name on it?

2 A. Yes, ma'am.

3 Q. And what is your answer, were you?

4 A. Would I show -- can you repeat that again?

5 Q. Were you shown a lineup with Tevin Williams' name
6 on it?

7 MS. SHOOK: Judge, I'm going to object.
8 I think this is confusing for him -- to show him
9 prior testimony without any kind of context.

10 THE COURT: It is sustained. The only
11 reason to show him the testimony is to refresh
12 his memory. You haven't asked him whether it
13 refreshes his memory, and then re-ask the
14 exact --

15 MS. FAUST: Well --

16 THE COURT: -- same question.

17 Q. (By Ms. Faust) Does that refresh your
18 recollection as to whether Tevin Williams' name
19 was on a photo lineup that you were seeing?

20 A. Yes, ma'am.

21 Q. And what is your answer, was it or not?

22 A. I mean, I don't --

23 MS. SHOOK: Judge, I'd ask her to
24 rephrase the question. I think that's confusing
25 him.

1 THE COURT: Well, I'm going to
2 overrule. Let's see if he has an answer.

3 THE WITNESS: You are asking me if his
4 name under his picture?

5 MS. FAUST: Yes.

6 THE WITNESS: I don't remember seeing
7 his name under the picture. I know they put a
8 circle around his picture. That's all I know.

9 Q. (By Ms. Faust) Okay. So your testimony today is
10 that the lineup showed a circle already around
11 Tevin Williams' picture?

12 A. Yes, ma'am.

13 Q. And your identification of Tevin Williams, was it
14 based on information that you learned after the
15 shooting?

16 In other words, did you learn information
17 that it was believed to be Tevin Williams who
18 shot you, after you were shot?

19 A. Yes, ma'am.

20 Q. And from what sources did you hear that it was
21 Tevin Williams?

22 A. One of my close friends had told me. I'm not
23 saying it was him, but -- and then one of my
24 people told me.

25 Q. Okay. And did someone come to you and tell you

1 that it was Tevin Williams very shortly after you
2 were shot?

3 A. Yes, ma'am.

4 Q. And did you -- do you know Alesha Davis?

5 A. Yes, ma'am.

6 Q. Did you have a confrontation or discussion with
7 her outside Dollar General store after you were
8 shot, if you recall?

9 A. Yeah, yeah, I had a couple words with her.

10 Q. And do you recall what the nature of that
11 conversation was?

12 A. It was so long ago I don't even remember.

13 Q. Okay.

14 A. Not nothing major. I mean, not nothing like
15 that.

16 Q. Okay. And did you -- when you --

17 You were in the hospital approximately a
18 week?

19 A. Yeah, something like that.

20 Q. And when you left, where did you go to stay?

21 A. To one of my people's house.

22 Q. Did you stay with Jessica Fitzpatrick?

23 A. Well, not right out I got out of the hospital,
24 no.

25 Q. Do you know approximately when you were staying

1 with her?

2 A. 2000 and -- I don't know, like, 2014, something
3 like that.

4 Q. Okay.

5 A. I think. But I know it was, like -- it was,
6 like, a little while before I got my colostomy
7 bag reversed. So whenever those things is.

8 Q. And do you know --

9 Well, since you were shot, you've been shown
10 a photograph of Traevon Williams, is that true or
11 not?

12 A. Since I've been shot?

13 Q. Yeah. After you were shot, had --

14 A. After I've been shot.

15 Q. -- anyone come to you with a photo?

16 A. Have anybody?

17 Q. Yeah, anyone. Law enforcement or anyone shown
18 you a photo?

19 A. The same detectives that shown me the picture the
20 first time.

21 Q. And who is Traevon Williams in relation to Tevin
22 Williams, do you know?

23 A. Who is he? I guess it's his brother, I guess,
24 yeah.

25 Q. And have you ever indicated to people that the

1 two of them look alike?

2 A. Have I?

3 Q. Uh-huh.

4 A. I don't even really know them like that for real
5 for real. I mean, I don't -- that was five years
6 ago. I mean -- I mean, I don't remember telling
7 nobody they look -- they do look alike, you know
8 what I'm saying. I look just like my brother
9 too. But I don't remember it.

10 Q. Okay. And just, finally, did you know Tevin
11 Williams prior to being shot?

12 A. No.

13 MS. FAUST: I have no further
14 questions.

15 THE COURT: Cross-examination,
16 Ms. Shook.

17 **CROSS-EXAMINATION**

18 **BY MS. SHOOK:**

19 Q. Mr. Lee, you testified at the original trial in
20 this case?

21 A. Yes, ma'am.

22 Q. And at that time when you testified, did you tell
23 the truth?

24 A. Yes, ma'am.

25 Q. Okay. Would it be fair to say that your

1 recollection at the time of the trial was
2 probably fresher, as far as what had happened,
3 than it is sitting here today?

4 A. Yes, ma'am, yeah.

5 Q. Okay. I'm going to show you what's been marked
6 as Movant's Exhibit No. 7; this is the same as
7 what was State's Exhibit No. 66 at the original
8 trial. Here on the back of this it has a list of
9 photo lineup instructions; right?

10 A. Yep.

11 Q. And would you agree with me that the law
12 enforcement officer who showed you this lineup
13 went over those instructions with you before you
14 did the lineup?

15 A. Yes, ma'am.

16 Q. Okay. And he told you that he was going to ask
17 you to look at a group of photos?

18 A. (Nodded head up and down.)

19 Q. Is that yes?

20 A. Yes, ma'am.

21 Q. And the fact that the photos were shown to you
22 were not supposed to influence your judgment in
23 any way?

24 A. Yes, ma'am.

25 Q. He told you not to conclude or guess that the

1 photographs contain the picture of the person who
2 committed the crime against you?

3 A. Yes, ma'am.

4 Q. And he said that if you recognize someone in the
5 photo, to tell the officer how you recognize
6 them?

7 A. Yes, ma'am.

8 Q. That you weren't obligated to identify anybody?

9 A. Yes, ma'am.

10 Q. Okay. And you've signed that you agreed with
11 those things as well as the other instructions on
12 this form; right?

13 A. Yes, ma'am.

14 Q. Did you follow those instructions to the best of
15 your ability when you did the lineup?

16 A. Yeah, I did. But, I mean, I was under the
17 influence of medication at the time.

18 Q. Okay.

19 A. You know what I'm saying. So, I mean, I think
20 they had a lot -- they could have a lot to do
21 with this.

22 Q. That could have a lot to do with why you don't
23 remember it very well?

24 A. Yeah.

25 Q. But at the time do you recall that you were

1 trying to follow the instructions?

2 A. Yeah.

3 Q. And then on the other side of this, we see six
4 photographs and one of the photos is circled;
5 correct?

6 A. Yes, ma'am.

7 Q. Do you recall whether you did that, made that
8 circle, or if an officer circled that?

9 A. Yeah, I did that circle.

10 Q. You made that circle?

11 A. Yes, ma'am.

12 Q. And are these your initials?

13 A. Yes, ma'am.

14 Q. Who made those initials?

15 A. I did.

16 Q. Why did you circle this photo and make those
17 initials next to this photo?

18 A. Because I thought that was the guy who shot me.

19 Q. Okay. You recognized that as being the person
20 who shot you?

21 A. Yeah.

22 Q. Okay. This separate document that you were
23 shown, I think you testified earlier that it
24 appeared the same to you as Movant's Exhibit
25 No. 7. You thought Movant's Exhibit 8 and

1 Movant's Exhibit 7 looked the same; right?

2 A. Yeah.

3 Q. And that's because they have the same six
4 photographs?

5 A. Yes, ma'am.

6 Q. But Movant's Exhibit No. 8 has names under the
7 photos.

8 A. Yes, ma'am.

9 Q. Movant's Exhibit No. 8 is not the set of photos
10 that you viewed and circled the one identifying
11 that as being the person who shot you; right?

12 A. Say what?

13 Q. Movant's Exhibit No. 8, this one with the names
14 under the photos, that's not the same set of
15 pictures that you saw where you identified the
16 Defendant as the person who shot you?

17 A. No, ma'am.

18 Q. Okay. Did you see one photo lineup or two photo
19 lineups at the hospital?

20 A. I swear I can't remember.

21 Q. Okay.

22 A. That was so long ago. I don't remember. It
23 might have been just -- I don't know.

24 Q. Okay. But you know that you saw Movant's Exhibit
25 No. 7 because you remember getting those

1 instructions and then circling this photo of the
 2 Movant and -- or he was called the Defendant at
 3 the original trial, and putting your initials on
 4 there; right?

5 A. Yes, ma'am.

6 Q. And that's because that's the guy who you saw
 7 shoot you?

8 A. Yeah.

9 Q. Okay. After you were released from the hospital,
 10 you said you went home to live?

11 A. Yeah, I went to my people's house, yes.

12 Q. To your people's house?

13 A. Yeah.

14 Q. Whose house was that?

15 A. A friend of mine.

16 Q. Do you recall who the friend was?

17 A. Her name was January.

18 Q. January?

19 A. Yeah.

20 Q. Was she a girlfriend or just a friend?

21 A. She was just a friend.

22 Q. Okay. Did Jessica Fitzpatrick also live there?

23 A. No. She stayed -- stayed somewhere else. I
 24 didn't stay with her, like, it was two different
 25 house.

1 Q. When you were staying with Jessica Fitzpatrick,
2 that wasn't at January's house?

3 A. No. That was, like, probably, about a year after
4 that, or something. I don't remember, like, the
5 exact date, but it was, like, eight months after
6 that.

7 Q. Okay. So would it surprise you to hear that
8 Jessica Fitzpatrick testified that when you got
9 out of the hospital you went and lived with her?

10 A. Would it surprise me?

11 Q. Yes.

12 A. No, it doesn't surprise me.

13 Q. It doesn't surprise you because that's true? Or
14 it wouldn't surprise you if she said something
15 that wasn't true?

16 A. She say I got out of the hospital I, like, moved
17 in with her?

18 Q. Yes.

19 A. That ain't true.

20 Q. And you said that that wouldn't surprise you if
21 she said something that wasn't true?

22 A. I mean, no, ma'am, it wouldn't surprise me. I
23 mean, I don't know. I don't -- yeah.

24 Q. Do you know Jessica Fitzpatrick to be a dishonest
25 person?

1 MS. FAUST: Objection.

2 A. Yeah.

3 THE COURT: It's overruled.

4 A. Yep.

5 Q. (By Ms. Shook) How long were you and Jessica
6 Fitzpatrick in a relationship?

7 A. Not long. Probably about seven, eight months.
8 Nothing major.

9 Q. And during that time period were you and she
10 exclusive?

11 A. Exclusive?

12 Q. Meaning, did you only see each other? Or did you
13 also see other people?

14 A. I'm pretty sure, um, yeah, she got a -- she
15 always had a little boyfriend, a little dude she
16 had been with for years. Yeah, I'm pretty sure
17 she was seeing other people.

18 Q. Were you seeing other people?

19 A. To be honest with you, no. Nope.

20 Q. When you and Jessica Fitzpatrick stopped being in
21 a relationship with each other, were you on good
22 terms or bad terms?

23 A. Good terms.

24 Q. Okay. Sitting here today, would you consider
25 yourself to be in good or bad terms with her?

1 A. For what I just heard, bad terms.

2 Q. So it would concern you if she was dishonest
3 about that?

4 A. Yes, ma'am.

5 Q. Okay. But otherwise, before today, you felt that
6 you and she were on good terms?

7 A. Actually, I seen a picture so it was just -- we
8 ain't on no good terms.

9 Q. Okay. Did you ever have a conversation with
10 Jessica Fitzpatrick where you told her that it
11 was a white boy who shot you and that he was
12 there with a dark-skinned guy with a hat on?

13 A. No, ma'am.

14 Q. So if she said that, she's not telling the truth?

15 A. She's not telling the truth. I don't know where
16 she got that from.

17 Q. Did you ever tell Jessica Fitzpatrick or anyone
18 else that you only gave the names that you did to
19 law enforcement because of a female who brought
20 the name to you?

21 A. No, ma'am. That was five years ago, but I don't
22 remember. I used to have a lot of discussion
23 about that. I talked to my immediate family, but
24 I didn't talk to nobody, you know what I'm
25 saying, like that, about what was going on. I

1 don't like talking about it.

2 Q. Did you talk to Jessica Fitzpatrick about who it
3 was that shot you?

4 A. No, ma'am. I don't remember. We might've had
5 some discussions, you know what I'm saying,
6 because I was staying with her in whatever type
7 relationship, but I really don't remember.

8 Q. Are you familiar with Alesha Davis?

9 A. I mean, I just know her mom, for real.

10 Q. You know Alesha Davis' mother?

11 A. Yeah.

12 Q. Who is --

13 A. I know --

14 Q. -- that?

15 A. -- her a little bit but I know her mom. Her mom
16 named Renee Moore.

17 Q. Were Alesha Davis and Jessica Fitzpatrick friends
18 to your knowledge?

19 A. I never knew they were 'til just now.

20 Q. And you already testified that you didn't know
21 the Movant, who was a Defendant at the trial;
22 right?

23 A. Yes, ma'am.

24 Q. Okay. And before all this happened, you didn't
25 know his brother either?

1 A. No, it was the kid. I don't know.

2 MS. SHOOK: I don't have anything
3 further.

4 THE COURT: Additional direct exam?

5 **REDIRECT EXAMINATION**

6 **BY MS. FAUST:**

7 Q. Regarding Jessica Fitzpatrick, when did you stay
8 with her?

9 A. I don't remember the exact month, ma'am.

10 Q. Do you remember if it was during the summer
11 months of 2013?

12 A. Did she tell you, like, when we stay together?
13 Because I really don't know.

14 Q. Okay. You don't know?

15 A. I really don't know.

16 Q. Do you recall if you had your colostomy bag at
17 that time?

18 A. Yes, ma'am.

19 Q. And did you?

20 A. Yes, ma'am. Yep.

21 Q. And you had your --

22 Approximately how long did you have the
23 colostomy bag?

24 A. Probably about -- I don't even remember.

25 Probably about six months or something like that.

1 Q. Okay. But it was -- and it was removed after
2 that?

3 A. Yeah, it was removed.

4 Q. Did you feel pressured by law enforcement to
5 identify Tevin Williams as the person who shot
6 you?

7 A. To be honest with you, I was so -- I was so,
8 like, medicationed up, drugged up, I don't
9 remember. I just wanted to go to sleep at the
10 time. Dang, nobody pressured me to do nothing.
11 I seen law enforcement, like, one time, like,
12 after that. Like, when I woke up from surgery or
13 whatever, I don't remember even seeing them no
14 more after that.

15 Q. Earlier you testified that you had heard
16 information on the street about who shot you;
17 right?

18 A. On the street, yes, ma'am.

19 Q. Is that right?

20 A. Yes, ma'am.

21 Q. And is it after you heard the information on the
22 street that it was Tevin Williams that shot you,
23 that you became convinced he was the shooter?

24 A. I mean -- yes, ma'am, until, like, the
25 altercation happened, you know.

1 Q. Okay.

2 A. But that's -- yeah, I heard that.

3 Q. And are you referring to an altercation between
4 yourself and Trae Williams?

5 A. What?

6 Q. You said until the altercation happened?

7 A. Yeah.

8 Q. Were you referring --

9 A. Until I ended up getting shot that night, like a
10 little fistfight or whatever.

11 MS. FAUST: I have no further
12 questions.

13 THE COURT: Ms. Shook?

14 MS. SHOOK: Nothing further.

15 THE COURT: Mr. Lee, thank you. You
16 may be excused.

17 (Witness excused.)

18 MS. FAUST: May I have a moment?

19 THE COURT: You may.

20 (Pause in proceedings.)

21 THE COURT: Ms. Faust, you have a
22 witness?

23 MS. FAUST: Call Alesha Davis.

24 THE COURT: Alesha Davis, right over
25 here, please.

1 **ALESHA DAVIS**, having been duly sworn by the
2 Court, testified as follows:

3 THE COURT: Have a seat, please. Kind
4 of adjust that microphone to fit you. Ms. Faust
5 is going to ask you some questions.

6 **DIRECT EXAMINATION**

7 **BY MS. FAUST:**

8 Q. Please state your full name.

9 A. Alesha Davis.

10 Q. And do you reside in Springfield, Missouri?

11 A. Yeah.

12 Q. Where did you reside back in the spring of 2013?

13 A. Springfield.

14 Q. And in 2014?

15 A. Springfield.

16 Q. I mean, have you continuously resided?

17 A. Uh-huh.

18 Q. Okay. And do you know Tevin Williams?

19 A. Yeah.

20 Q. And how do you know him?

21 A. He's my cousin.

22 Q. Okay. On your mother or your father's side?

23 A. Father.

24 Q. Who is your father?

25 A. Jimmy Davis.

1 Q. Okay. And do you know Desmond Williams?

2 A. Uh-huh.

3 Q. Were you at Desmond Williams' mother's residence
4 on May 1st of 2013?

5 A. Yes.

6 Q. And what were you doing there?

7 A. They were having a party so I was just stopping
8 in for the party.

9 Q. Did people refer to it as a jam session or do you
10 know?

11 A. I don't know what they referred it to. But
12 that's what it was, a party.

13 Q. Okay. And if you recall, do you recall
14 approximately how many people were at the party?

15 A. Maybe, like, 20-plus.

16 Q. And at some point did you learn that John Lee had
17 been shot?

18 A. That was, like, I seen John Lee at Dollar General
19 and he kind of, like, blocked my car in and
20 that's when I learned he was shot. He told me
21 himself.

22 Q. What Dollar General was that?

23 A. On Commercial Street here in Springfield.

24 Q. And approximately when was that, as far as the
25 date and time?

1 A. It was about, like -- I don't recall the exact
2 date or time, but it was about a week or so after
3 he was shot.

4 Q. Okay. So how do you know that? How do you know
5 it was about a week or so after he was shot?

6 A. Because he was bandaged and he was not in the
7 hospital.

8 Q. Oh, I see.

9 But you had not heard of the shooting prior
10 to that time?

11 A. Not like -- I wasn't, like, concrete hearing of
12 it. Like, through town, yeah. But no one
13 physically came up to me and said John Lee was
14 shot.

15 Q. Okay. Had you heard that anybody was accused of
16 shooting him at that time when John Lee
17 confronted you?

18 A. When he confronted me, he asked me who shot him.
19 And I told him I didn't know. But he didn't say
20 a specific person shot him. He just asked me who
21 it was that shot him.

22 Q. And how is it that you know John Lee?

23 A. He used to date my mom.

24 Q. So were you -- so did you --

25 Had you heard anything about who was accused

1 of shooting him at that time?

2 A. No, not necessarily.

3 Q. And did you at some point after that write an
4 affidavit?

5 A. A statement, yeah.

6 Q. I'll hand you what's been marked Movant's
7 Exhibit 5. Do you recognize that document?

8 A. Yeah.

9 Q. And what is this document?

10 A. It's a statement I wrote.

11 Q. Okay. And in this statement do you indicate that
12 you were confronted by John Lee?

13 A. Correct.

14 MS. SHOOK: Judge, I will object to
15 reading the statement in through this witness and
16 it's hearsay.

17 THE COURT: The objection is overruled.

18 Q. (By Ms. Faust) And so why did you write this
19 statement?

20 I mean, did someone ask you to write this
21 statement, or what caused you to write this
22 statement?

23 A. Tevin's lawyer asked -- after, like, I explained
24 what happened, he asked me to write the statement
25 and account what happened, whenever I encountered

1 John at Dollar General.

2 Q. Okay. And taking you back to the party that was
3 on May 1st, in your statement you also indicated
4 that you arrived at that party very late; is that
5 right?

6 A. Yeah.

7 MS. SHOOK: Objection, leading.

8 THE COURT: Okay. Objection is
9 overruled. But let's not lead any further than
10 this.

11 Q. (By Ms. Faust) Do you recall what you -- when
12 you said you arrived at the party?

13 A. Correct, yeah.

14 Q. And when was that?

15 A. It was around 3 A.M. The party was already going
16 when I got there.

17 Q. And how would you know that it was at 3 A.M.?

18 A. Because I was coming from somewhere else and it
19 was, like, 2:30.

20 Q. I'm sorry. Was 2:30 when you left?

21 A. It was 2:30 when I left, where I was originally
22 coming from, and then about the time I got across
23 town it was, like, 3 A.M.

24 Q. Okay. And when you arrived was Tevin Williams
25 present?

1 A. Correct.

2 Q. And did you ever leave the party -- well, what
3 did you --

4 When did you leave the party?

5 A. I was there for maybe an hour. So, and, as I was
6 leaving, Tevin asked me to take him home because
7 it was on the route that I was going.

8 Q. Do you know what time that was?

9 A. Maybe, like, 3:45, 4 A.M.

10 Q. And where did you take him?

11 A. To his house on Division.

12 Q. So between the time you arrived at Desmond
13 Williams' house at approximately 3 A.M. to 3:45,
14 4 A.M., did you ever leave Desmond Williams'
15 home?

16 A. No.

17 Q. And did you see Tevin Williams leave at all?

18 A. No. He left with me at the end when I was going
19 home.

20 Q. And did you notice anything unusual about Tevin
21 Williams in his demeanor?

22 A. No.

23 Q. And did you take pictures at the party?

24 A. I don't have pictures, no.

25 Q. Okay. And were you drinking at the party?

1 A. Somewhat, yeah.

2 Q. And were you intoxicated?

3 A. No.

4 Q. And were you doing any controlled substances?

5 A. No.

6 Q. And on the affidavit that you signed was
7 everything that you said in that affidavit true?

8 A. Correct.

9 Q. And do you recall who else was at the party,
10 people?

11 A. I can't recall everyone, but it was a bunch of --
12 it was a lot of people there. I could name a
13 couple people if you want, but I can't recall
14 every single person that was there.

15 Q. Have you seen John Lee since this altercation at
16 the Dollar General?

17 A. In passing, yeah.

18 Q. Have you had any conversations with him?

19 A. No.

20 Q. Did anybody -- are you under subpoena today to be
21 here?

22 A. No.

23 Q. So you came voluntarily?

24 A. Yeah.

25 Q. Has anybody promised you or threatened you to get

1 you to say anything that isn't true here today?

2 A. No.

3 MS. FAUST: I have no further
4 questions.

5 THE COURT: Cross-examination?

6 MS. SHOOK: I don't have any questions.

7 THE COURT: Ms. Davis, you may step
8 down.

9 (Witness excused.)

10 MS. FAUST: Movant rests.

11 THE COURT: Very well.

12 Ms. Shook, will the State have evidence it
13 wishes to present?

14 MS. SHOOK: I don't have any evidence.
15 I do have some things that I would like the Court
16 to take judicial notice of.

17 THE COURT: It sounds like evidence to
18 me. What would that be?

19 MS. SHOOK: Well, I mean, I'm not going
20 to call any witnesses or present any exhibits. I
21 would ask the Court to take judicial notice of
22 1331-CR01762-01.

23 THE COURT: The underlying criminal
24 case?

25 MS. SHOOK: It is.

1 THE COURT: Any objection?

2 MS. FAUST: No. I believe it's already
3 in evidence.

4 THE COURT: Okay. Judicial notice will
5 be taken of that Greene County case file.

6 MS. SHOOK: And I would also ask that
7 the Court take judicial notice of the entire
8 contents of the appellate case filed, which is
9 Appeal No. SD33685.

10 THE COURT: Any objection?

11 MS. FAUST: No.

12 THE COURT: The Court will take notice
13 of that. If there is something specific in that
14 case file you need for the Court to review, we
15 need to talk about that perhaps after the close
16 of this case to make sure I have that available
17 to me.

18 MS. SHOOK: I don't have anything
19 further.

20 THE COURT: Okay. Ms. Faust, do you
21 wish to make a final remark?

22 MS. FAUST: Very briefly, Judge.

23 As Mr. Huffman stated, he should have done a
24 notice of alibi. There were multiple witnesses.
25 He did call one alibi witness at trial, Sarah

1 Caldera. And there were multiple witnesses
2 ready, willing, and available to testify as to
3 the whereabouts of Tevin Williams at the time of
4 the shooting of John Lee. And I believe there is
5 a reasonable probability that the outcome of the
6 trial would have been different if those
7 witnesses would have been called to testify.

8 I know that the State, in questioning Stuart
9 Huffman, made great hay over the fact that
10 Jessica Fitzpatrick was an ex-girlfriend and so
11 probably wouldn't have had any credibility.

12 But as can be seen from Movant's Exhibit 70
13 and what was entered at trial and the testimony
14 of Chelsea Brashears, the only other witness that
15 really could corroborate John Lee's story was an
16 ex-girlfriend of Desmond Williams.

17 And I would ask the Court to review the last
18 few minutes of her video because she does
19 indicate that she's afraid of Mr. Williams. And
20 so -- and it would be Desmond Williams, not Tevin
21 Williams. But Desmond and Tevin are related.
22 And she implicated Desmond Williams, as can be
23 seen in her impeachment testimony. She was the
24 girlfriend of Desmond Williams and said that
25 Desmond Williams gave the gun to Tevin and then

1 recanted that testimony at trial. I believe that
 2 alone would be sufficient to grant Mr. Williams a
 3 new trial. As far as the specific points, I --
 4 as to 9(a) regarding appellate counsel, I believe
 5 that I am standing on the record. I am not
 6 offering any independent evidence regarding that.

7 THE COURT: What does the record -- I
 8 guess we are to the point now --

9 MS. FAUST: We're relying on the
 10 appellate record --

11 THE COURT: Okay. Let --

12 MS. FAUST: -- and the trial
 13 transcript.

14 THE COURT: -- me ask the question
 15 before you try to answer it.

16 MS. FAUST: Sure.

17 THE COURT: I would like to know, do
 18 you think you have submitted evidence in support
 19 of the claim made at 9(a), and if so, what is it?

20 MS. FAUST: I do. It would be the
 21 appellate brief. Also, the State has asked you
 22 to take judicial notice of the entire appellate
 23 file of -- and Southern District case -- or the
 24 Western District case, and I believe that State's
 25 Exhibit 70 also goes toward the argument in 9(a).

1 As I said, I do concede that -- I believe that
 2 the State is correct that the case law cited in
 3 the claim has been superseded as is indicated
 4 oddly in the claim itself. But, again, I
 5 would -- I would rely on those three documents
 6 specifically in support of that claim.

7 THE COURT: Okay. Let's look at 9(b).
 8 Evidence has been presented to support the claim
 9 of error made in 9(b). Do you think that's
 10 State's Exhibit 70?

11 MS. FAUST: Yes, Your Honor.

12 THE COURT: Okay. 9(c) is the failure
 13 to issue subpoenas?

14 MS. FAUST: I'm sorry, Judge, if I may
 15 backup. On State's Exhibit 70, I think
 16 specifically the impeachment testimony regarding
 17 her fear of Desmond Williams and specifically the
 18 evidence that she said it was a black gun that
 19 she saw, when the trial testimony, and testimony
 20 today, was provided by Darnell Lee that it was a
 21 chrome gun.

22 THE COURT: 9(c) is the failure to
 23 issue subpoenas to three witnesses?

24 MS. FAUST: Yes, Your Honor. And I
 25 believe Stuart Huffman's testimony supports this

1 claim, and so does the -- do the exhibits that
2 were offered, the affidavits, and Alesha Davis
3 and Jessica Fitzpatrick's testimony.

4 MS. SHOOK: I would suggest to the
5 Court that evidence was not submitted to the
6 Court with regard to Claim C as it relates to
7 Melvin Jackson. The Court doesn't have what his
8 proposed -- or what his expected testimony would
9 have been had he testified or any evidence from
10 which the Court could find that he would have
11 been available and willing to testify if
12 subpoenaed at trial.

13 MS. FAUST: And, Judge, I believe that
14 testimony was offered through Stuart Huffman,
15 that he had spoken to him; he did anticipate him
16 to testify and to provide the testimony as stated
17 in the claim.

18 MS. SHOOK: I think the case law on
19 post-conviction relief matters is very clear that
20 in order to present adequate evidence of that for
21 the Court to consider and find in a Movant's
22 favor that they have to call the witness to
23 testify, put in what their testimony would be and
24 again testify that they would have been available
25 and willing to come testify if subpoenaed.

1 THE COURT: I don't recall Alesha Davis
2 being asked that either. Was she asked that?

3 MS. FAUST: Yes, she was asked if she
4 was available and where she lived, and she lived
5 in St. Louis -- or I'm sorry, Springfield, and
6 was available.

7 THE COURT: You think you asked her
8 that when she was here?

9 MS. FAUST: Yes.

10 THE COURT: Okay. I guess the record
11 will be what it is. But nobody asked her why she
12 didn't show up. In fact, she wasn't even
13 subpoenaed to be here today.

14 MS. FAUST: She wasn't able to be
15 found.

16 THE COURT: Pardon?

17 MS. FAUST: I couldn't find her to
18 subpoena her. That's why she isn't under
19 subpoena. But I also note for the record that
20 her affidavit has been admitted into the record.

21 THE COURT: Okay. And D, that's the
22 issue with the photo lineup?

23 MS. FAUST: Yes. And, Judge, that
24 evidence, both exhibits -- well, it was State's
25 Exhibit 66 and 67, and Movant's corollary 7 and 8

1 have previously been admitted at trial. And if
 2 the Court wishes to retain a copy of that for its
 3 review, I believe the State said that the color
 4 copy you could --

5 THE COURT: We will look at that after
 6 the close. Let's close the record here as soon
 7 as we can, after we've covered everything.

8 So there are four points of error that are
 9 raised by the Movant; is that correct? A, B --

10 MS. FAUST: Yeah.

11 THE COURT: -- C and D? Okay.
 12 Anything further from the Movant?

13 MS. FAUST: No.

14 THE COURT: Ms. Shook, anything further
 15 from you?

16 MS. SHOOK: I would just say that I
 17 don't think that there is sufficient evidence for
 18 the Court to even consider the Claim C as it
 19 relates to Melvin Jackson.

20 I don't think that the evidence that the
 21 Court has is sufficient to find in Movant's favor
 22 with regard to Alesha Davis or Jessica
 23 Fitzpatrick either.

24 But I do think the Court should at least
 25 evaluate those two claims based on the evidence

1 that was presented here.

2 And with regard to D, which is the only one
 3 I haven't already responded to, I do think that
 4 the Court has evidence to consider; although, I
 5 don't think that it supports a finding in
 6 Movant's favor because the evidence wasn't
 7 consistent with what was outlined in the claim as
 8 far as what the evidence was expected to be.

9 THE COURT: Okay. Anything further
 10 before we close the record, from the Movant?

11 MS. FAUST: No.

12 THE COURT: From the State?

13 MS. SHOOK: No.

14 THE COURT: Okay. We will be off the
 15 record and in recess.

16 (Court stood in adjournment
 17 at 3:36 P.M.)

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CERTIFICATE OF COURT REPORTER

I, Tina R. Miller, Certified Court Reporter, do hereby certify that I am the Official Court Reporter of Division I of the Greene County Circuit Court, State of Missouri; that on the 22nd day of May, 2018, I was present and reported all of the proceedings had and entered of record in the case of TEVIN L. WILLIAMS vs. STATE OF MISSOURI; Case No. 1631-CC00958 and Appeal No. SD35695.

I further certify that the foregoing pages contain a true and accurate reproduction of my Stenograph shorthand notes of said proceedings.

Costs for preparing this transcript are in compliance with Supreme Court Rule 84.18.

Transcript completed and electronically signed this 4th day of December, 2018.

/s/ Tina R. Miller
Tina R. Miller, CCR
Official Court Reporter

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